

Health Policy Committee Hearing, September 13, 2016

To: Honorable State Representative Mike Callton and members of the House Health Policy Committee

RE: Confidentiality Concerns Regarding HB 5782

This bill proposes to amend MCL 330.1748(7) by adding (b) to (7) as follows: ***“(B) AS NECESSARY FOR TREATMENT, COORDINATION OF CARE, PAYMENT, OR OTHER RELATED SERVICES FOR THE DELIVERY OF MENTAL HEALTH SERVICES, IN ACCORDANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191.***

This language is similar to the language in HIPAA (federal confidentiality law) which makes it permissible for a covered entity (in our case a PIHP/CMHSP) to disclose a broad array of information with the only requirement (in HIPAA, not in this proposed language) that the covered entity notify the patient at that time services are initiated regarding the circumstances under which information will be released with and without consent. HIPAA has significant and substantial protections which are built into the statute and the regulations promulgated under that statute that do not exist in the proposed language of this bill. If this bill passes one could make a case that just about everything is allowable to disclose.

Reasons that the Michigan Mental Health Code (748 of 1974 PA 258 (MCL 330.1748) has stronger protections than the 42CFR/HIPAA provisions include the need to more stringently protect behavioral health information (as 42CFR Part 2 does for Substance Use Disorder more stringently protects information on SUD treatment) due to the stigma attached to a person once their use of Mental Health treatment is known.

This change to the Michigan Mental Health Code will blow a hole in the provisions large enough to drive a tractor trailer through, and will make a sham out of any attempt at privacy of these records that is truly needed by those who have to face the challenges that society imposes on them due to their mental disabilities. This will have far-reaching negative consequences including exposing individuals receiving mental health services to even greater discrimination in housing, employment, child custody, financial transactions, health care, elected office. Anti-Stigma efforts, while having a positive impact, have not yet resulted in the elimination of social isolation and discrimination.

Some health policy experts argue that more sharing of medical record information leads to better health outcomes. Please trust citizens to know if and when that is true in their own circumstances and afford them and their legal representatives the right to give or withhold consent to release their confidential mental health records. If the release is truly beneficial the service provider should be able to explain that to the person receiving services and obtain their consent or that of their legal representative.

I strongly urge you to vote this introduced bill down. Thank you for your consideration

Respectfully,

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